

NURSE PRACTICE ACT

U.C.A. Subsection 63-55-258(12) repeals this act July 1, 2005

58-31b-101. Title.

This chapter is known as the "Nurse Practice Act."

58-31b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(2) "Applicant" means a person who applies for licensure or registration under this chapter by submitting a completed application for licensure or registration and the required fees to the department.

(3) "Approved education program" means a nursing education program that meets the minimum standards for educational programs established under this chapter and by division rule in collaboration with the board.

(4) "Board" means the Board of Nursing created in Section 58-31b-201.

(5) "Consultation and referral plan" means a written plan jointly developed by an advanced practice registered nurse and a consulting physician that permits the advanced practice registered nurse to prescribe schedule II-III controlled substances in consultation with the consulting physician.

(6) "Consulting physician" means a physician and surgeon or osteopathic physician and surgeon licensed in accordance with this title who has agreed to consult with an advanced practice registered nurse with a controlled substance license, a DEA registration number, and who will be prescribing schedule II-III controlled substances.

(7) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to the effective execution and management of health care.

(8) "Examinee" means a person

who applies to take or does take any examination required under this chapter for licensure.

(9) "Health care assistant" means an individual who:

(a) engages in the practice of a health care assistant; and

(b) is subject to registration under this chapter and is not subject to registration, licensure, or certification under any other chapter of this title.

(10) "Geriatric care manager" means a licensed practical nurse who has had additional training in long-term care nursing and holds a current, valid certificate of completion from a training course approved by the division in collaboration with the board, and is certified by the division as a Licensed Practical Nurse - Geriatric Care Manager.

(11) "Licensee" means a person who is licensed, registered, or certified under this chapter.

(12) "Long-term care facility" means any of the following facilities licensed by the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act:

(a) a nursing care facility;

(b) a small health care facility;

(c) an intermediate care facility for the mentally retarded;

(d) an assisted living facility Type I or II; or

(e) a designated swing bed unit in a general hospital.

(13) "Practice as a health care assistant" means providing direct personal assistance or care for compensation to an individual who is ill, injured, infirm, developmentally or physically disabled, mentally disabled, or mentally retarded, and who is in a private residence or regulated facility.

(14) "Practice of geriatric care management":

(a) means a licensed practical nurse with specialized knowledge of geriatric and chronically ill patients residing in a long-term care facility as provided in Subsection 58-31b-302(2); and

(b) includes an expanded scope of practice which may include:

(i) implementing a plan of care;

(ii) completing an assessment and evaluation of response to treatment; and

(iii) other tasks and skills as defined by division rule.

(15) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment. The practice of nursing requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences, and includes:

(a) initiating and maintaining comfort measures;

(b) promoting and supporting human functions and responses;

(c) establishing an environment conducive to well-being;

(d) providing health counseling and teaching;

(e) collaborating with health care professionals on aspects of the health care regimen;

(f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and

(g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.

(16) (a) "Practice of nurse anesthesia" means the practice of nursing related to the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a physician, surgeon, or other licensed professional, who is acting within the scope of their practice, by a person licensed under this chapter as a certified registered nurse anesthetist and includes:

(i) preanesthesia preparation and evaluation including:

(A) performing a preanesthetic assessment of the patient;

(B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and

(C) selecting, ordering, or administering appropriate medications;

(ii) anesthesia induction, maintenance, and emergence, including:

(A) selecting and initiating the planned anesthetic technique;

(B) selecting and administering

anesthetics and adjunct drugs and fluids; and

(C) administering general, regional, and local anesthesia;

(iii) postanesthesia follow-up care, including:

(A) evaluating the patient's response to anesthesia and implementing corrective actions; and

(B) selecting, ordering, or administering the above medications and studies; and

(iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:

(A) emergency airway management;

(B) advanced cardiac life support; and

(C) the establishment of peripheral, central, and arterial invasive lines.

(b) Nothing in this section shall be construed as to require a certified registered nurse anesthetist to obtain an advance practice registered nurse license in order to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

(17) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by rule and as provided in this Subsection (17) by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:

(a) contributing to the assessment of the health status of individuals and groups;

(b) participating in the development and modification of the strategy of care;

(c) implementing appropriate aspects of the strategy of care;

(d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and

(e) participating in the evaluation of responses to interventions.

(18) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (18) by a person licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by rule. Registered nursing acts include:

(a) assessing the health status of individuals and groups;

(b) identifying health care needs;

(c) establishing goals to meet identified health care needs;

(d) planning a strategy of care;

(e) prescribing nursing interventions to implement the strategy of care;

(f) implementing the strategy of care;

(g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;

(h) evaluating responses to interventions;

(i) teaching the theory and practice of nursing; and

(j) managing and supervising the practice of nursing.

(19) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:

(a) maintenance and promotion of health and prevention of disease;

(b) diagnosis, treatment, correction, consultation, and referral for common health problems; and

(c) prescription or administration of prescription drugs or devices including:

(i) local anesthesia;

(ii) schedule IV-V controlled substances; and

(iii) schedule II-III controlled substances in accordance with a consultation and referral plan.

(20) "Regulated facility" means a health care facility subject to licensure under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act and does not include:

(a) the Utah State Hospital or the Utah State Developmental Center;

(b) a residential treatment or residential support facility:

(i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and Facilities; and

(ii) serving people with disabilities, as defined by Department of Human Services rules; or

(c) a health care facility which is licensed or certified under Title 26, Chapter 21.

(21) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

(22) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the standards of the profession.

(23) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

58-31b-103. Education and enforcement fund.

(1) There is created within the General Fund a restricted account known as the "Nurse Education and Enforcement Fund."

(2) The account shall be nonlapsing and consist of:

(a) administrative penalties

imposed under Section 58-31b-402; and

(b) interest earned on monies in the account.

(3) Monies in the account may be appropriated by the Legislature for the following purposes:

(a) education and training of

licensees under this chapter;

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and

(iii) monitoring compliance of renewal requirements;

(c) survey nursing education programs throughout the state; and

(d) education and training of board members.

58-31b-201. Board.

(1) There is created the Board of Nursing that consists of the following eleven members:

(a) nine nurses in a manner as may be further defined in division rule; and

(b) two members of the public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203 and shall:

(a) (i) recommend to the division minimum standards for educational programs qualifying a person for licensure, registration, or certification under this chapter;

(ii) recommend to the division denial, approval, or withdrawal of approval regarding educational

programs that meet or fail to meet the established minimum standards; and

(iii) designate one of its members on a permanent or rotating basis to:

(A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(B) advise the division in its investigation of these complaints.

(b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(4) (a) The director shall appoint an individual to serve as the executive administrator of the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative procedure, the executive administrator shall serve as an ex officio member of the board and shall represent the position of the division in matters considered by the board.

(b) The executive administrator shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.

58-31b-301. License or certification required -- Classifications.

(1) A license is required to engage in the practice of nursing, except as specifically provided in Sections 58-1-307 and 58-31b-308.

(2) The division shall issue to a person who qualifies under this chapter a license or certification in the classification of:

- (a) licensed practical nurse;
- (b) licensed practical nurse - geriatric care manager;
- (c) registered nurse;
- (d) advanced practice registered nurse intern;
- (e) advanced practice registered nurse; and
- (f) certified registered nurse anesthetist.

(3) An individual holding an advanced practice registered nurse license as of July 1, 1998, who cannot document the successful completion of advanced course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued an "APRN

- without prescriptive practice" license.

(4) The division shall grant an advanced practice registered nurse license to any licensed advanced practice registered nurse currently holding prescriptive authority under any predecessor act on July 1, 1998.

(5) (a) An individual shall be registered under this chapter in order to engage in practice as a health care assistant, except as provided in Sections 58-31b-308 and 58-31b-308.5.

(b) The division shall issue to a person who qualifies under this chapter a registration in the classification of health care assistant.

58-31b-301.5. Geriatric Care Manager Pilot Program.

(1) (a) The division shall establish a licensed practical nurse - Geriatric Care Manager Pilot Program to determine the safety and efficiency of expanding the scope of practice for a licensed practical nurse who meets the requirements of Subsection 58-31b-302(2).

(b) The pilot program shall begin on July 1, 2004 and sunset in accordance with Section 63-55b-158.

(c) If the Legislature does not reauthorize the expanded scope of practice for geriatric care managers after the sunset date in Section 63-55b-158, an individual licensed and certified in good standing as a geriatric care manager may continue to practice as a licensed practical nurse.

(2) If at any time the division determines the certification pilot program has become a threat, or potential threat to the public health, safety, or welfare, the division may authorize emergency rules to place the certification program in abeyance until the next legislative session.

58-31b-302. Qualifications for licensure or certification -- Criminal background checks.

(1) An applicant for licensure as a licensed practical nurse shall:

(a) submit to the division an application in a form prescribed by the division;

(b) pay to the division a fee determined under Section 63-38-3.2;

(c) have a high school diploma or its equivalent;

(d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;

(e) have completed an approved

practical nursing education program or an equivalent as determined by the board;

(f) have passed the examinations as required by division rule made in collaboration with the board; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(2) An applicant for certification as a licensed practical nurse - geriatric care manager shall:

(a) submit an application to the division on a form prescribed by the division;

(b) pay a fee to the division as determined under Section 63-38-3.2;

(c) have a current license, in good standing, as a licensed practical nurse;

(d) have one year experience in a long-term care facility;

(e) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse - geriatric care manager;

(f) have completed a division-approved geriatric care management education program or an equivalent as determined by the division in collaboration with the board;

(g) have passed the examinations as required by division rule made in collaboration with the board; and

(h) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(3) An applicant for licensure as a registered nurse shall:

(a) submit to the division an application form prescribed by the division;

(b) pay to the division a fee determined under Section 63-38-3.2;

(c) have a high school diploma or its equivalent;

(d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;

(e) have completed an approved registered nursing education program;

(f) have passed the examinations as required by division rule made in collaboration with the board; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(4) Applicants for licensure as an advanced practice registered nurse shall:

(a) submit to the division an application on a form prescribed by the division;

(b) pay to the division a fee

determined under Section 63-38-3.2;

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) have earned a graduate degree in an advanced practice registered nurse nursing education program or a related area of specialized knowledge as determined appropriate by the division in collaboration with the board;

(f) have completed course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board;

(g) have successfully completed clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule, after completion of the masters degree required for licensure, to practice within the psychiatric and mental health nursing specialty;

(h) have passed the examinations as required by division rule made in collaboration with the board;

(i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

(j) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(5) An applicant for licensure as a certified registered nurse anesthetist shall:

(a) submit to the division an application on a form prescribed by the division;

(b) pay to the division a fee determined under Section 63-38-3.2;

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as a certified registered nurse anesthetist;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) complete a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;

(f) be currently certified by a program approved by the division in collaboration with the board and submit evidence

satisfactory to the division of the certification; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(6) An applicant for registration as a health care assistant shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) certify in writing that he is free from any physical, mental, or emotional condition that will or may reasonably be expected to prevent the applicant from practicing as a health care assistant in compliance with this chapter; and

(d) may not, within five years immediately prior to application, have any substantiated allegations of abuse, neglect, or misappropriation of client property listed against him on the certified nurse assistant registry maintained by the State Office of Education or on a similar registry maintained in another state in compliance with 42 CFR 483.156.

(7) An applicant for licensure, registration, or certification under this chapter:

(a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; and

(ii) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system (NCIC) or any successor system; and

(b) if convicted of one or more felonies, must receive an absolute discharge from the sentences for all felony convictions five or more years prior to the date of filing an application for licensure or registration under this chapter.

(8) For purposes of conducting the criminal background checks required in Subsection (6), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(9) (a) (i) Any new nurse license or health care assistant registration issued under this section shall be conditional, pending completion of the criminal

background check.

(ii) If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license or registration shall be immediately and automatically revoked.

(b) (i) Any person whose conditional license or registration has been revoked under Subsection (9)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

(ii) The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing programs.

An applicant for licensure as a practical nurse or registered nurse who is a graduate of a nursing education program not approved by the division in collaboration with the board must comply with the requirements of this section.

(1) An applicant for licensure as a licensed practical nurse shall:

(a) meet all requirements of Subsection 58-31b-302(1), except Subsection (1)(e); and

(b) produce evidence acceptable to the division and the board that the nursing education program completed by the applicant is equivalent to the minimum standards established by the division in collaboration with the board for an approved licensed practical nursing education program.

(2) An applicant for licensure as a registered nurse shall:

(a) meet all requirements of Subsection 58-31b-302(3), except Subsection (3)(e); and

(b) (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or

(ii) produce evidence acceptable to the division and the board that the applicant is currently licensed as a registered nurse in one of the states, territories, or the District of Columbia of the United States and has passed the NCLEX-RN examination.

58-31b-304. Qualifications for admission to the examinations.

(1) To be admitted to the examinations required for certification as a licensed practical nurse - geriatric care manager, a person shall:

(a) submit an application on a form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2; and

(c) meet all requirements of Subsection 58-31b-302(2) except the passing of the examination.

(2) To be admitted to the examinations required for licensure as a practical nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2; and

(c) meet all requirements of Subsection 58-31b-302(1), except Subsection (1)(f).

(3) To be admitted to the examinations required for licensure as a registered nurse, a person shall:

(a) submit an application form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2; and

(c) meet all the requirements of Subsection 58-31b-302(3), except Subsection(3)(f).

58-31b-305. Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63-38-3.2; and

(b) meet continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as a advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

(4) In addition to the renewal requirements under Subsection (2), a person licensed as a certified registered nurse anesthetist shall be currently certified in anesthesia by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification.

(5) Each license automatically expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

58-31b-306. APRN intern license.

(1) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except for the passing of required examinations, if the applicant:

(i) is a graduate of an approved nursing education program within the year immediately preceding application for an intern license;

(ii) has never before taken the examinations; and

(iii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (1)(a) expires on the earlier of:

(i) a date following a period established by division rule;

(ii) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations upon notification to the applicant; or

(iii) the date upon which the division issues the individual an APRN license.

(2) An applicant specializing in psychiatric mental health nursing may be issued an APRN intern license upon completion of all licensure requirements, except for the passing of required examinations and completion of required clinical practice hours.

(3) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except course work in patient assessment or pharmacotherapeutics, if that applicant:

(i) is licensed in good standing as an advanced practice registered nurse in another state or jurisdiction; and

(ii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.

(b) An APRN intern license issued under Subsection (3)(a) expires on the

earlier of:

(i) a date following a period established by division rule; or

(ii) the date upon which the division issues the individual a regular license.

58-31b-308. Exemptions from licensure or registration.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of the practice of nursing, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) friends, family members, foster parents, or legal guardians of a patient performing gratuitous nursing care for the patient;

(b) persons providing care in a medical emergency;

(c) persons engaged in the practice of religious tenets of a church or religious denomination; and

(d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.

(2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensing Compact.

(3) In addition to the exemptions from licensure under Section 58-1-307, the following individuals may engage in acts or practices included in the practice of a health care assistant, within the stated limitations, without being registered under this chapter:

(a) an individual providing gratuitous care for another individual;

(b) a volunteer, whether or not he receives token compensation other than salary or wages:

(i) in programs sponsored or authorized by federal Public Law 93-113; or

(ii) at any regulated facility; and

(c) individuals providing:

(i) services generally considered independent living activities such as preparing meals, shopping for personal items or groceries, managing money, using the telephone, performing housekeeping, and other similar activities not involving direct personal assistance and care as the division may define by rule; and

(ii) child day care or baby-sitting,

whether or not the services are subject to licensure under Title 26, Chapter 39, Utah Child Care Licensing Act;

(d) an individual employed on an intermittent basis to provide a specified limited period of care for an adult or child with disabilities needing regular daily care, in order to allow the relative or other person who is the adult or child's regular and unpaid caretaker respite from his or her caregiver duties regarding the adult or child; or

(e) notwithstanding Subsection 58-31b-102(11) an individual employed by another person who is self directing his personal care in his private residence.

58-31b-308.5. Health care assistant registration -- Temporary employment prior to registration.

(1) An individual may temporarily engage in practice as a health care assistant for not more than ten consecutive days immediately after being initially employed in the state as a health care assistant, without having submitted a registration application under this chapter. The registration application shall be postmarked not later than the last day of the ten consecutive days referred to in this Subsection (1).

(2) An individual may not practice as a health care assistant in this state for more than ten days without having submitted an application for registration.

(3) If the application for registration is denied, the applicant shall cease practice in this state as a health care assistant upon receipt of notice of the denial.

58-31b-309. Continuing education.

(1) The division in collaboration with the board may establish continuing education requirements for each classification of nurse licensure.

(2) The division may discriminate between classifications of licensure with respect to continuing education requirements upon finding the continuing education requirements are necessary to reasonably protect the public health, safety, or welfare.

58-31b-401. Grounds for denial of licensure or certification and disciplinary proceedings.

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to

issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

(2) If a court of competent jurisdiction determines a nurse or health care assistant is an incapacitated person as defined in Section 75-1-201 or that he is mentally ill as defined in Section 62A-15-602, and unable to safely engage in the practice of nursing or the practice of a health care assistant, the director shall immediately suspend the license of the nurse or health care assistant upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse or health care assistant, in writing, of the suspension.

(3) (a) If the division and the majority of the board find reasonable cause to believe a nurse or health care assistant, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing nursing or the practice of a health care assistant with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse or health care assistant with a notice of hearing on the sole issue of the capacity of the nurse or health care assistant to competently, safely engage in the practice of nursing or the practice of a health care assistant.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every nurse or health care assistant who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting to an immediate mental or physical examination, at the nurse's or health care assistant's expense and by a division-approved practitioner selected by the nurse or health care assistant, when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a

privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the nurse or health care assistant is mentally ill or incapacitated or otherwise unable to practice nursing or health care assistance with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the nurse's or health care assistant's patients or the general public.

(c) (i) Failure of a nurse or health care assistant to submit to the examination ordered under this section is a ground for the division's immediate suspension of the nurse's or health care assistant's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse or health care assistant and was not related directly to the illness or incapacity of the nurse or health care assistant.

(5) (a) A nurse or health care assistant whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the nurse's or health care assistant's patients or the general public.

(6) A nurse or health care assistant whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the nurse or health care assistant, under procedures established by division rule, regarding any change in the nurse's or health care assistant's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of nursing or the practice of a health care assistant; and

(b) he is qualified to have his

license to practice under this chapter restored completely or in part.

(7) Nothing in Section 63-2-206 may be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.

(8) For purposes of this section and Section 58-31b-402, "licensed" or "license" includes "registered" or "registration" and "certified" or "certification" under this chapter.

58-31b-402. Authority to assess penalty.

(1) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-31b-501(1)(a) or (b), consistent with Section 58-31b-503.

58-31b-501. Unlawful conduct.

(1) "Unlawful conduct" includes:

(a) using the following titles, names or initials, if the user is not properly licensed under this chapter:

- (i) nurse;
- (ii) licensed practical nurse, practical nurse, or L.P.N.;
- (iii) registered nurse or R.N.;
- (iv) registered nurse practitioner, N.P., or R.N.P.;
- (v) registered nurse specialist, N.S., or R.N.S.;
- (vi) registered psychiatric mental health nurse specialist;
- (vii) advanced practice registered nurse;
- (viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or
- (ix) other generally recognized names or titles used in the profession of nursing;

(b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter; and

(c) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601.

(2) (a) An individual registered as a health care assistant under this chapter may use any title in his practice as a health care assistant, and an employer may assign a title to health care assistants it employs, if the title does not cause a reasonable person to believe the registrant is a licensee in any other license classification under this chapter and Title 58, Occupations and Professions.

(b) If any issue is raised regarding a title under this section, the division shall determine if the title may be used for health care assistants.

(3) An individual licensed as a practical nurse who is certified as a geriatric care manager under this chapter, may use the title "licensed practical nurse - geriatric care manager" or the initials "LPN-GCM" to designate the additional training and certification.

58-31b-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's position or practice as a nurse;

(2) failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(3) engaging in sexual relations with a patient during any:

- (a) period when a generally recognized professional relationship exists between the nurse and patient; or
- (b) extended period when a patient has reasonable cause to believe a professional relationship exists between the nurse and patient;

(4) (a) as a result of any circumstance under Subsection (3),

exploiting or using information about a patient or exploiting the licensee's professional relationship between the licensee and the patient; or

(b) exploiting the patient by use of the licensee's knowledge of the patient obtained while acting as a nurse;

(5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(6) unauthorized taking or personal use of nursing supplies from an employer;

(7) unauthorized taking or personal use of a patient's personal property;

(8) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any other circumstance related to the patient and the medical or nursing care provided;

(9) unlawful or inappropriate delegation of nursing care;

(10) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(11) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;

(12) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(13) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;

(14) failure to pay a penalty imposed by the division;

(15) prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan;

(16) violating Section 58-31b-801; and

(17) practicing as a licensed practical nurse - geriatric care manager in a setting other than a long-term care facility.

58-31b-503. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a)(i) is

guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(a)(ii) through (v) and 58-31b-501(1)(c) is guilty of a class A misdemeanor.

(3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.

(4) Subject to Subsection (5), the division may assess administrative penalties in accordance with the provisions of Section 58-31b-402 for acts of unprofessional or unlawful conduct or any other appropriate administrative action in accordance with the provisions of Section 58-31b-401.

(5) If a licensee has been convicted of violating Section 58-31b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative penalty under this chapter for the same offense for which the conviction was obtained.

58-31b-601. Minimum standards for nursing programs and certification training programs.

(1) A nursing education program shall be affiliated with an accredited institution of higher education in order to be approved by the division.

(2) The minimum standards a nursing program shall meet to qualify graduates for licensure under this chapter shall be defined by division rule.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules defining the minimum standards a licensed practical nurse - geriatric care manager training program must meet to qualify a person for certification under this chapter as a licensed practical nurse - geriatric care manager.

58-31b-701. Immunity from liability.

A person licensed, registered, or certified under this chapter:

(1) who provides emergency care in accordance with Section 78-11-22 is entitled to the immunity from civil liability provided under that section; and

(2) is considered a health care provider under Chapter 13, Health Care Providers Immunity from Liability Act, and is entitled to the immunity from civil liability provided under that chapter.

58-31b-702. Reporting of disciplinary action -- Immunity from liability.

(1) A licensed health care facility or organization or a professional society of nurses in the state that takes disciplinary action against a person licensed under this chapter relating to any of the following shall report the action in writing to the division within 30 days after the action is taken:

(a) that person's professional acts or omissions as a licensed nurse or registered health care assistant;

(b) that person's nursing competence or ability to practice nursing safely; or

(c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person is impaired in his ability to practice nursing or health care assistance safely.

(2) Any person or organization furnishing information in accordance with this section is immune from liability to the extent that the information is furnished in good faith and without malice.

58-31b-801. Practice within limits of competency.

(1) Each person licensed under this chapter is responsible for confining his practice as a nurse to those acts and practices permitted by law.

(2) A person licensed under this act may not engage in any act or practice for which he is not competent.